

Electronic Product Recycling Proposal

August 2005

Purpose: Create and finance a collection, transportation and processing system within the state that will assure recycling of unwanted electronic products.

Section 1. Definitions

Terms used in this chapter have the meaning given to them in this chapter unless the context clearly indicates otherwise.

"Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more electronic products.

"Certified collection, transportation and processing systems and service provider" means:

- Any entity licensed and permitted under all required state and local laws to provide collection, transportation or processing services in the state; and
- Are registered with and certified by the department as a company authorized to provide collection, transportation and processing services under this act.

"Cover electronic product" means Desktop or personal computers, computer monitors, portable computers, and televisions. The universe of products covered includes historic, orphan and migrated units that are in the state. Only products owned by current residents within the state of Washington are included.

"Current resident" means any one living within the geographic area of Washington state at a location that is a residential address and is verified by a valid Washington state driver's license or other legally acceptable form of identification.

"Collection location" means a location in the state that accepts from consumers at no cost, unwanted electronic products. Collection locations must be staffed, in operation every day of the year, except state legal holidays, and be permanently established. Collection locations may only be operated by a certified collection service provider under contract with a manufacturer in accordance with the manufacturers approved plan. Collection locations do not include temporary collection locations, short-term collection events, or other locations that are not permanently established, routinely available and conveniently accessible. Collection services may be provided in association with retail stores provided that the retailer commits to participation in the plans required herein and is a certified collection service provider.

"Manufacturer" means any one that sells new to the public a brand of electronic product in the state of Washington and includes:

- Original Equipment Manufacturers whose products are sold under brand names owned by the manufacturer, its subsidiaries and related companies;
- Assemblers of covered electronic products that use parts manufactured by others and sold under the assemblers brand names owned by the assembler, its subsidiaries and related companies;
- Retail establishments that sell covered electronic products under their own brand names, its subsidiaries and related companies that are assembled for them by others; and
- Retailers that assemble and sell covered electronic products directly to the public.

"Processed" or "processing" means disassembling or dismantling products to recover materials contained therein and prepare those materials for refining or reuse in new products. It may also include salvaging parts to be used in new products.

"Unwanted product" means covered electronic product that has no value to its owner to perform the functions for which it was designed.

Section 2. Requirements

All covered electronic products will be processed by certified processors as required in section 8 of this act, through the approved systems established by manufacturers, in order to recover materials and prepare them for recycling markets. By-pass and residual materials with no recycling market may be disposed at legally permitted disposal facilities after processing.

Only covered electronic products owned by current residents of the state of Washington are included.

Section 3. Costs to be born by manufacturers through the sale of their products

There shall be a fee recovered at the point of sale as part of the retail price of electronic products. The fee shall be paid to manufacturers as part of the wholesale price of the product charged to the wholesaler or retailer. The fees collected will be used to pay for the services necessary for the collection, transportation and processing of electronic products. When the retailer is defined as the manufacturer, that retailer will provide its own funding.

At the end of each calendar year, the total quantity of unwanted products processed will be calculated and processed percentages will be apportioned to each manufacturers plan. Percentage of financial responsibility will be based on the market share of new product sales within the state from the previous year based on reports required in section 4, C.

Section 4. Manufacturer Registration and Licensing

All manufacturers must register with and be licensed by the state of Washington for the privilege of selling their products in this state.

A. Registration

Within 90 days of the effective date of this act, all manufacturers must register their intention to sell covered electronic products into the state of Washington by submitting notification to the department of that intent. The notification must include:

- Name of Manufacturer;
- Product brand names that the manufacturer intends to sell within the state;
- Methods of sale used; and
- Name of the highest level individual within the manufacturers organization responsible for the sales of the manufacturer's products within the United States and Washington state with associated contact information and signature of those individuals.

In order to receive a license to sell electronic products, manufacturers must first submit a plan that demonstrates how they will provide an electronic product collection, transportation and processing system within the state with a timeline for implementation for approval from the department.

B. Electronic Products Distribution License

1). No manufacturer may distribute, or have distributed on its behalf, an electronic product in this state until a license to distribute has been obtained by that manufacturer. An annual license is required for each out-of-state or in-state distribution location that distributes electronic products in Washington state. An application for each location shall be filed on forms provided by the master license system and shall be accompanied by an annual fee of five hundred dollars per location. The license shall expire on the master license expiration date.

2). An application for license shall include the following:

- (a) The name and address of licensee;
- (b) A registration certification from the department certifying compliance with the requirements of this act; and
- (c) Any other information required by the department by rule.

3). The name and address shown on the license shall be shown on all labels, pertinent invoices, and storage facilities for electronic products distributed by the licensee in this state.

4). If an application for license renewal provided for in this section is not filed prior to the master license expiration date, a delinquency fee of three hundred dollars per week of delinquency shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. The assessment of this delinquency fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that their products have not been distributed subsequent to the expiration of the prior held license.

C. Maintenance of certification and licenses to do business in the state of Washington – Reporting requirements

All businesses that wish to have the privilege of selling electronic products into the state to consumers shall report the number and type of products sold into the state by brand name. Reports will be given to each manufacturer of each brand and the Department, annually on a calendar year basis. The reports must be received by the department no later than February 15th of the year following the reporting period. Failure to submit reports to the department will result in the revocation of the privilege of selling products into the state.

Section 5. Plans

A. Plan requirements

Plans will demonstrate how the manufacturer(s) will provide services for the collection, transportation and processing of unwanted covered electronic products conveniently, permanently and continuously, with no additional cost to the consumer. Plans must be written in a manner that will assure ongoing process improvements in order to continually seek opportunities to increase recovery of unwanted electronic products and reduce overall costs.

Manufacturers may write individual plans or may participate as a member of a group plan in collaboration with other manufacturers. Manufacturers may also elect to participate as a member of the Materials Management and Finance Authority established in sections 21 through 27 of this act. Manufacturers that choose to participate as a member of the Authority will opt into a standard program plan, designed and operated by the authority, with the full and active participation of member manufacturers.

Manufacturers are encouraged to collaborate with electronic product retailers, certified collectors, transporters and processors, certificated waste haulers, recycling businesses, and local government solid waste management planning jurisdictions in the development of their plans.

Plans must contain the following elements:

- Collection, transporting and processing systems that will be utilized;
- Collection, transportation and processing service providers;
- Target recovery rates by type and number of units that will be collected;
- Use of funds collected;
- Accounting and reporting systems that will be employed to track progress toward meeting target recovery rates and document product sales within the state;
- Timeline including startup and implementation with associated progress mile stones with anticipated results;
- A financial assurance plan for cleanup of sites related to collection, transportation or processing of unwanted electronic products per section 19 of this act; and
- Public information campaign to promote the continued use and reuse of covered electronic products and end of life management of the products by the final users. Manufacturers will work in collaboration with the department and local governments in the development and implementation of this public information campaign.

The plans will be designed to build upon and utilize existing infrastructure and businesses in the state to the extent practicable and result in the most cost effective approach for collecting, transporting and processing for the citizens of the state.

B. Level of Service

1). Collection Sites

Plans must assure that covered electronic products collection services are available to all citizens of the state currently residing within its geographic boundaries. The services must be at a level as least as convenient to purchase electronic products. The number of collection locations required in the state will be based on the most recent U. S. Census Bureau Economic Census of Retail Trade in Washington, combining the number of warehouse clubs and superstores, computer electronics stores and radio, television and other electronics stores. According to the 2002 Economic Census there were 536 such stores in the state. Therefore, there shall be at least one location for every 11,200 people in the state and distributed evenly across the state based on county populations. The number shall be upgraded with each subsequent Economic Census so as to keep pace with the growth of the state over time.

Collection service providers may offer collection services in forms different than collection sites if those alternate services can be demonstrated to provide equal or better convenience to the citizens of the state at equal to or less than the same cost and will realize increased recovery of unwanted electronic products. The alternatives must be permanent and continuous so as to assure the consumer the opportunity to return unwanted electronic products any day of the year, except state recognized legal holidays.

Rural areas without commercial centers, unincorporated communities, or areas with widely dispersed population may be served by collection services at the nearest commercial centers where electronics are sold in the same or neighboring county or by mail-back systems. All collection service providers must be registered pursuant to section 8 of this act.

Except as provided in section 6, this level of service will be provided to:

- Private individuals;
- Small businesses;
- Government;
- School districts;
- Institutions of higher education; and
- Charities.

Plans will be updated periodically based on performance measures established in the plans so as to continuously improve opportunities to recycle unwanted electronic products within the state, and to accommodate changes in products and in response to new collection, transportation and processing technologies that improve efficiency and effectiveness and reduce overall costs. Plans will be updated as prescribed in the plans and at least every four years.

The state solid waste management plan and local government solid waste management plans must be reviewed, and updated as necessary, to assure compatibility with this act.

Section 6. State government, first class cities¹, class A and AA counties² and the state institutions of higher education will establish, operate and maintain a method to collect and prepare for reuse or sale for reuse or recycling, unwanted electronic products that have been purchased and were used in the course of doing their business.

For all state and local governments and political sub-divisions, the Department of General Administration shall establish the system under chapter 43.19.1919 RCW related to surplus properties management and RCW Chapter 43.19.19191 RCW Surplus computers and computer-related equipment -- Donation to school districts or educational service districts, and will make that system available to use by all state government agencies, counties, cities, school districts and all other political sub-divisions within the state.

The Department of General Administration will assure that their surplus and unwanted electronic products, other than those sold as individual units to private citizens, are managed only by registered transporters and processors. They will further assure that their products are directed to legal secondary materials markets by requiring a chain of custody record that documents to whom the products were initially delivered through to the end use manufacturer.

This section does not apply to covered electronic products that are leased or purchased through contracts containing manufacturer take-back requirements.

Covered electronic products that are collected, transported and processed may not be included in meeting manufacturer target recovery rates.

Section 7. Existing collection, transportation and processing services to be used

Manufacturers shall assure that existing collection, transportation and processing systems and services within the state are used, in order to minimize costs. This use of existing services is not intended to preclude new entrepreneurial activity or growth and development of new businesses within the state. Rather, the intent is to use existing services to maximum extent practicable in order to provide the most cost effective systems for recycling of electronic products to the citizens of Washington State.

Section 8. Registration of Collectors, Transporters and Processors

Each collector, transporter and processor of covered electronic products in the state of Washington shall register with the Department. The registration shall include all identification requirements for licensure in the state of Washington, geographic area of the state that they serve, and rates charged for services.

¹ Aberdeen, Bellingham, Bremerton, Everett, Richland, Seattle, Spokane, Tacoma, Vancouver, Yakima

² King, Pierce, Snohomish, Clark, Yakima, Benton, Spokane

A registered service provider list will be assembled by the department and will be made available to manufacturers required to write plans upon their request.

Registration will be renewed annually and must be accompanied by a report containing:

- Manufacturer(s), governments and businesses with which they have contracted for services; and
- Quantities of covered electronic products and to whom the products or recovered materials were delivered foreign or domestic, by number of units and weight and what the materials were used for, separately accounted for by the TPO operated program, independent plan programs, all covered electronic products collected from governments and from large businesses.

All registered collectors, transporters and processors receiving certification of registration from the department must be in and remain in compliance with all state and federal regulations governing wages including compliance with the state minimum wage, worker safety and health requirements and environmental regulations. All shipments must comply with all state and federal environmental, import and export laws, all applicable laws of receiving countries and all applicable international laws and agreements. Failure to be in full compliance with these regulations will result in the denial or revocation of certification.

Section 9. Green Track Label

Each manufacturer that demonstrates product improvements that lead to improved product recyclability, use of recycled materials in the production of new products and design changes that eliminate toxicity of materials contained in the products, shall be recognized as on the Green Track and will be provided with a label from the department which they may use in advertising and promotion of their products. The department will create rules that will establish the qualification requirements. Green Track is voluntary. Applications for Green Track – Electronics Manufacturer, will be accepted from any manufacturer that is in compliance with this act.

Section 10. Confidentiality, exception.

It shall be a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter.

Section 11. Misbranding

No person may distribute misbranded or non-branded electronic products. An electronic product shall be deemed to be misbranded if it is:

- a. Bears any statement, design, or graphic representation relative thereto which is false or misleading;
- b. Distributed under the name of another electronic product; or
- c. Labeled in a manner as to render it unlikely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Section 12. Reuse of Covered Electronic Products

There will be no effort to direct or control free markets for reuse of covered electronic products. Every effort shall be made to encourage continued use of covered electronic products with remaining functional value. Product reuse will not be included as part of the recovery rate established as a standard or share of responsibility.

Section 13. Consumer Information

Manufacturers must inform consumers about how to recycle their covered electronic products at end of life. This information must be provided to the original purchaser and be available to the owner of the product at end of life.

The Department of Ecology, in collaboration with manufacturers, wholesalers and retailers of covered electronic products and local governments, will promote covered electronic product recycling and product stewardship by:

- Posting information where to recycle unwanted electronic products on the internet;
- Providing information about recycling covered electronic products through a toll free telephone service;
- Listing certified collection, transportation and processing service providers on the internet; and
- Carrying out an advertising campaign to raise public awareness of covered electronic product recycling issues and opportunities.

Section 14. Waste Reduction, Recycling and Litter Control Tax

Manufacturers, wholesalers and retailers of covered electronic products within the state are added to the group of industries required to pay the waste reduction, recycling and litter control tax established in RCW 70.93.

Section 15. Managing Existing Products

Products that have moved into the state after being purchased in another state by their owner when their owner was a resident of another state will be treated as a product sold in the state when they become unwanted products.

Unidentifiable products and products sold prior to the effective date of this act will be managed as products sold in the state when they become unwanted. Costs for collection, transportation and processing of these products will be paid for through cost sharing in accordance with the distribution formula contained in section 15 of this act.

Section 16. Identification Labeling

As of June 30, 2006, all covered electronic products sold into the state of Washington shall be brand labeled by the manufacturer of the products. Manufacturer brand labels shall be affixed in such a way that they can not be removed. These labels will include brand and name of manufacturer.

The label will be placed on the main unit of each product. A CPU, computer monitor or television set are each considered main units.

Section 17. Restrictions on Hazardous Substances

Electronic products sold into the state of Washington must comply with the European Union's directive, "restriction of the use of certain hazardous substances in electrical and electronic equipment," (RoHS).

Section 18 Deferral to national program

Sections 1 through 16 of this act become void upon the establishment of a national electronic product recycling system established by and funded through an act of Congress.

Section 19 Financial Assurance

Each manufacturer will establish a financial assurance mechanism to provide funding to cover costs of, and any potential liability costs associated with, cleanup of sites used to provide required contracted collection, transportation and processing services. This financial assurance can be in the form of insurance policies, fund accounts, investments or other mechanism that will assure funds immediately, if needed.

Section 20 Penalties

Failure to register as an electronic product collector, transporter or processor Any person that collects, transports, processes or disposes of covered electronic products in ways not approved within the plans or is not registered with the department as authorized to provide such services is in violation of the act and will pay a penalty of \$10,000 for each violation and \$100 for each covered electronic product handled.

Failure to register as a covered electronic products manufacturer Any manufacturer that has not registered with the department as a manufacturer selling covered electronic products within the state and sells covered electronic products within the state will be assessed a penalty of not less than \$200 per each unit sold upon first citation of infraction and \$1,000 per each unit sold upon the second and each subsequent citation of infraction.

Sale of non-brand label equipment prohibited Any manufacturer, wholesale or retail business selling non-branded covered electronic products within the state after June 30, 2007 shall be in violation of this act and will be assessed a penalty of not less than \$200 per each unit sold upon first citation of infraction and \$1,000 per each unit sold upon the second and each subsequent citations of infraction.

Failure to submit a plan Any manufacturer that has not submitted and received approval from the department, a plan shall be in violation of this act and will be penalized on the basis of \$1,000 for each covered electronic product sold into the state.

Unapproved disposal of covered electronic products prohibited No person shall dispose of covered electronic products within the state of Washington outside of the systems established within the approved plans. Any person disposing of covered electronic products in ways other than those listed in the plans shall be found in violation of this act and will be assessed a fine of not less than \$100 for each unit. Each manufacturer of illegally disposed electronic products shall be assessed a fine of not less than \$100 for each of their brand labeled product. Funds collected under this provision shall be used to supplement manufacturers' consumer education programs.

Sections 21 through 27 of this act constitute a new chapter within title 70 of the revised code of Washington - these sections will be known as the MATERIALS MANAGEMENT AND FINANCING AUTHORITY

Section 21 Purposes -- Construction.

Economic development and environmental protection are dependent upon each other. Society relies upon environmental resources for the materials of commerce. Society also depends upon the free services of the environment that are important to sustaining all life, such as healthy water, air and safe surroundings. Society must live within the capacity of the environment to provide both.

It is essential to the health, safety, and welfare of all Washington citizens that material resources, once extracted from the environment for commercial use, remain commercially available and usable within the economic system. Beyond the associated environmental benefits, doing so would provide meaningful business and employment opportunities.

It is the primary purpose of this chapter to establish a materials management authority to act as business management organization on behalf of the citizens of the state to manage financial resources and contract for services for materials collection, transportation and processing of secondary materials derived from electronic products, without using state funds or lending the credit of the state or local governments.

It is also a purpose of this chapter to encourage the employment and retention of Washington workers at meaningful wages and to develop innovative approaches to improve materials management efficiency in order to assure and increase the use of secondary material resources within the economy. This chapter is enacted to accomplish these and related purposes and shall be construed liberally to carry out its purposes and objectives.

Section 22 Definitions.

As used in this chapter, the following words and terms have the following meanings, unless the context requires otherwise:

(1) "Authority" means the Washington materials management and financing authority created under this act or any board, body, commission, department or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law;

(2) "Fees" means funds collected on new electronic products sold into this state at the first point of possession within the state, returned to manufacturers participating in the standard program and paid to authority established under sections 17 through 22 of this act.

(3) "Manufacturer" means any one that sells new to the public a brand labeled covered electronic product in or into the state of Washington. Manufacturers include:

- Original Equipment Manufacturers whose products are sold under brand names owned by the manufacturer, its subsidiaries and related companies;
- Assemblers of covered electronic products that use parts manufactured by others and sold under the assemblers brand names owned by the assembler, its subsidiaries and related companies;
- Retail establishments that sell covered electronic products under their own brand names, its subsidiaries and related companies that are assembled for them by others; and
- Retailers that assemble and sell covered electronic products directly to the public.

(4) "Existing collection, transportation and processing systems and service provider" and herein shall be referred to as service provider, means:

- Any entity licensed and permitted under all required state and local laws to provide collection, transportation or processing services in the state; and
- Are registered with the department as a company authorized to provide collection, transportation and processing services under this act.

(9) "Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation and processing services, in whole or part, that will be provided to the citizens of the state within service areas as described in approved manufacturers plans..

(10) "Service area" means an area of any size where collection, transportation and processing services will be provided

(11) "Plan" means the general business plan of the authority;

(12) "Economic development" means projects owned and operated by the private sector for recovering and using secondary materials in manufacturing production and assembly of products;

(13) "Cover electronic products" means personal computers, computer monitors and televisions.

(14) "Financing agreements" means, and includes without limitation, a contractual arrangement with a manufacturer of covered electronic products that will assure funds collected under the financing section herein, are provided to the authority in sufficient amount and timeliness that the authority remains solvent of debt at all times.

Section 23 Materials Management and Financing Authority created -- Membership.

The Materials Management and Financing Authority is established as a public body corporate and politic, with perpetual corporate succession, constituting an instrumentality of the state of Washington exercising essential governmental functions. The authority is a public body within the meaning of RCW 39.53.010.

The authority shall be governed by a board of directors as follows:

The state treasurer, three public members, one representative from each manufacturer that has a financial agreement with the authority or a single representative for a multi-party consortium of manufacturers submitting a plan to the Department of Ecology as required under RCW XXX and one representative from the retail industry in the state. The public members shall be residents of the state appointed by the governor on the basis of their interest or expertise in sustainable economic development, business financing and law and environmental protection. One of the public members shall be appointed by the governor as chair of the authority's board of directors and shall serve as chair of the board at the pleasure of the governor. The board may select from its membership such other officers as it deems appropriate. The directors of the department of community, trade and economic development and the department of Ecology shall serve as ex-officio members.

The term of the persons appointed by the governor as public members of the authority, including the public member appointed as chair, shall be four years from the date of appointment. Public members may be reappointed to consecutive terms. There are no term limits on representatives of manufacturers.

In the event of a vacancy on the board due to death, resignation or removal of one of the public members, or upon the expiration of the term of one of the public members, the governor shall appoint a successor for the remainder of the unexpired term.

Any member of the authority may be removed by the governor for misfeasance, malfeasance or willful neglect of duty after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing by the affected member.

The state agency directors serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Such designations shall be made in writing in such manner as is specified by the rules of the authority.

The members of the board shall serve without compensation but shall be entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter.

A majority of the board shall constitute a quorum.

Section 24 Scope of authority's powers

Set fee level.

The authority shall set annual fees, assess charges to participating manufacturers and collect fees directly to fund the activities identified in the following section. The authority may adjust the fees in order to assure that all costs associated with the identified activities are covered. Should the fees collected not cover costs, the authority shall charge participating manufacturers the difference in what had been collected and the total cost, pro rated as devised by the authority.

Use funds.

The authority shall use any funds legally available to it for any purpose specifically authorized by this chapter PROVIDED, That no funds of the state shall be used for such purposes and, that no funds available to the authority are used to duplicate the infrastructure already available through private industry in the state, to:

- (1) Contract and pay for collecting, transporting and processing of covered electronic products and other services as identified in approved manufacturers plans;
- (2) Pay for the expenses of the authority including, but not limited to, salaries, benefits, operating costs and consumable supplies, equipment, office space and other expenses related to the costs associated with running such an organization;
- (3) Reimburse costs incurred by the Department of Ecology for reviewing and approving plans and carrying out its enforcement responsibilities; and
- (4) Establish a financial assurance fund to provide funding to cover costs and any potential liability costs associated with cleanup of sites used to provide required contracted collection, transportation and processing services. This financial assurance can be in the form of insurance policies, fund accounts, investments or other mechanism that will assure provide funds immediately, when needed. The Department of Ecology, the authority and all potentially liable parties will work in full cooperation to avoid the creation of contaminated sites, cleanup sites that inadvertently become contaminated and restore the sites to usable condition. The full enforcement authority and role of the department related to hazardous contamination and clean up of sites is not effected by this section.

All funds collected by the authority under this act, including interest, dividends and other profits, are and will remain under the complete control of the authority and its board of directors and be fully available to achieve the intent of this chapter.

Adopt general operating plan.

(1) The authority shall adopt a general operating plan of procedures for the authority. The authority shall also adopt operating procedures for individual programs as they are developed for collecting funds from participating covered electronic manufacturers and for providing funding for contracted services. These operating procedures shall be adopted by resolution prior to the authority operating the applicable programs.

(2) The plan shall include, but are not limited to: (a) Appropriate minimum reserve requirements to secure the authority's financial stability; (b) appropriate standards for contracting for services; and (c) strict standards for performance of service providers against established target recovery rates for covered electronic products

(3) The plan shall include how the authority will coordinate and implement approved manufacturer's plans.

At least one public hearing shall be conducted by the authority on the plan prior to its adoption. The plan shall be adopted by resolution of the authority board of directors no later than DATE. The authority may periodically update the plan as determined necessary by the authority board of directors and no less than every four years. The plan or updated plan shall include a report on authority activities conducted since the commencement of authority operation or since the last plan was reported, whichever is more recent, including a statement of results achieved under the purposes of this chapter and the plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the plan.

Section 25 Additional powers authorized.

In addition to accomplishing the specifically authorized in this chapter, the authority may:

- (1) Maintain an office or offices;

- (2) Sue and be sued in its own name, and plead and be impleaded;
- (3) Engage consultants, agents, attorneys, and advisers, contract with federal, state, and local governmental entities for services, and hire such employees, agents and other personnel as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (4) Make and execute all manner of contracts, agreements and instruments and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (5) Acquire and hold real or personal property, or any interest therein, in the name of the authority, and to sell, assign, lease, encumber, mortgage, or otherwise dispose of the same in such manner as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (6) Open and maintain accounts in qualified public depositories and otherwise provide for the investment of any funds not required for immediate disbursement, and provide for the selection of investments;
- (7) Appear in its own behalf before boards, commissions, departments, or agencies of federal, state, or local government;
- (8) Procure such insurance in such amounts and from such insurers as the authority deems desirable, including, but not limited to, insurance against any loss or damage to its property or other assets, public liability insurance for injuries to persons or property, and directors and officers liability insurance;
- (9) Apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value, to be held, used and applied as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (10) Act as an agent, by agreement, for federal, state, or local governmental entities to carry out the programs authorized in this chapter;
- (11) Establish, revise, and collect such fees and charges as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (12) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter: PROVIDED, That expenditures with respect to the financial obligations of the authority shall not be made from funds of the state;
- (13) Establish such reserves and special funds, and controls on deposits to and disbursements from them, as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (14) Give assistance to private and public bodies contracted to provide collection, transportation and processing services by providing information, guidelines, forms, and procedures for implementing their financing programs;
- (15) Prepare, publish and distribute, with or without charge, such studies, reports, bulletins, and other material as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (16) Delegate, through contract, any of its powers and duties if consistent with the purposes of this chapter;
- (17) Adopt rules concerning its exercise of the powers authorized by this chapter; and
- (18) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter.

Section 26 Restrictions on authority's activity.

Notwithstanding any other provision of this chapter, the authority shall not:

- (1) Give any state money or property or loan any state money or credit to or in aid of any individual, association, company, or corporation, or become directly or indirectly the owner of any stock in or bonds of any association,

company, or corporation;

(2) Issue bills of credit or accept deposits of money for time or demand deposit, administer trusts, engage in any form or manner in, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association other than as provided in this chapter;

(3) Be or constitute a bank or trust company within the jurisdiction or under the control of the director of financial institutions, the comptroller of the currency of the United States of America or the treasury department thereof;

(4) Be or constitute a bank, broker or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange or securities dealers' law of the United States of America or the state; or

(5) Financing any venture, investment or capital improvement not otherwise authorized by this act.

(6) All sales data from individual manufacturers will be held confidentially. Freedom of information act requirements do not apply.

Section 27 Staffing, restrictions -- Authority not to receive appropriated state funds.

The authority shall receive no appropriation of state funds. The authority shall employ a chief executive officer, to be appointed by the board with concurrence of the governor, and a chief financial officer as well as professional, technical and support staff, appointed by the chief executive officer, necessary to carry out its duties. Employees of the authority are not classified employees of the state, exempt from state service regulations and shall receive compensation only from the authority at rates competitive with state service. The authority will retain its own legal counsel. The departments of Ecology and Community, Trade and Economic Development shall provide start up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority. Expenses for these staff will be paid for through fees and funds collected by the authority and will be reimbursed to the departments from the authority's financial resources within the first twenty-four months of operation.

The authority can generate revenue from two sources. 1). Fees collected from manufacturers of covered electronic products for the purposes of paying for operating costs and contracted services; and 2). Grants, contributions and other sources that do not obligate the state or the authority to secure debt.

Section 28 Severability

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 29 Emergency

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Notes:

The Materials Management and Finance Authority is modeled after Chapter 43.163 RCW -
ECONOMIC DEVELOPMENT FINANCE AUTHORITY

The Washington State Constitution permits the expenditure of public funds only for public purposes. Const. art. 7, § 1 (amend. 14).^{1/}

In a recent opinion, the State Supreme Court quoted and then applied the following explanation of a public municipal purpose:

[T]he public purposes for which cities may incur liabilities are not restricted to those for which precedent can be found, but the test is whether the work is required for the general good of all the inhabitants of the city. But it is not essential that the entire community, or even a considerable portion of it, should directly enjoy or participate in an improvement in order to make it a public one. . . . [T]he test of a public purpose should be whether the expenditure confers a direct benefit of reasonably [[Orig. Op. Page 4]] general character to a significant part of the public. . . .